LOW SUIT (M.W) & TAN MEE KIAU

v.

LIM SUN HIANG & ANOR.

HIGH COURT MALAYA, JOHOR BAHRU
LC VOHRAH J
[SUIT NO. 25-1093 OF 1986]
31 JANUARY 1991

DAMAGES: *Accident claim - Liability - Modern trends in determining quantum of damages for estate and dependency claims - Formula used.*

This was a claim for damages on the aftermath of a road accident, the Administrative of the estate of the two deceased (victims of the said accident) sued as the plaintiff.

On the issue of liability the learned Judge held the defendants liable.

The matter for consideration was the question of damages.

On the question of quantum, the multiplier considered as reasonable years purchase for each deceased was considered by the learned Judge.

Held:
The Court agreed with *Rebecca Mathew & Ors. v. Syarikat Kerjasama Serbaguna Gema Wong Siong Bhd. & Anor*. [1990] 1 MLJ 443 that "the approach of deducting a percentage leaving the remainder as surplus income for the defendants is a modern trend for both estate and dependency claims".

Case referred to:
Rebecca Mathew & Ors. v. Syarikat Kerjasama Serbaguna Gema Wong Siong Bhd. & Anor. [1990] 1 MLJ 443 ***(foll)***

For the plaintiff - M. Nathan; M/s. Nijar & Nijar
For the defendant - R.A. Kumar; M/s. Varughese, Kumar, Netto & Partners

JUDGMENT

LC Vohrah J:

The driver of the motor-lorry (DW1) stated in evidence that just before the accident he was driving at 30 kph. as he was going uphill and then all of a sudden a motorcycle, coming from the opposite direction, overtook a bicycle, came to his side of the road, and knocked into the step on the right side of the lorry. Later, he stated that he swerved his lorry to the grass verge on his left when he saw the motorcycle encroaching into his path and then he only heard a bang. His evidence that the motorcycle encroached into his side of the road is believed by the neutral evidence afforded by the sketch plan D3 which shows the motorcycle lying on its correct side of the road and the scratch marks K to K2, all on the motor - cycle's correct side of the road. The evidence of the investigating officer PW4 was that the scratch marks K, K1 and K2 were fresh marks when he visited the scene at about 7.55 a.m. on the day of the accident after receiving the report of the accident at 6.10 a.m. The opinion of PW4, as an officer having experience of investigations of road accidents, was that they appeared to have been the result of something hard scratching the road surface. His conclusion was that the motorcycle had been dragged by the motor - lorry. I have no reason to disagree with this conclusion especially having regard to the fact that the motorcycle, according to the JPJ report, suffered damage to its front, middle and back portions, damage

consistent with it being dragged after impact. The irresistible inference is that the collision occurred on the motor - cycle's correct side of the road and that it was dragged by the lorry for a distance of about 258 feet all along the motor - lorry's wrong side of the road clearly indicating that DW1 had encroached into the motor - cyclist's path. I am satisfied that this encroachment was the cause of the accident and that he was driving without due care and attention and at great speed indicated by his statement that he was only able to see the bicycle when it was only 15 feet when he should have seen it much further ahead bearing in mind that the road was a straight road. Although he was going up an incline it was a very gradual incline and his view would certainly not have been obstructed if he had been driving with due care and attention and at the speed of only 30 kph. along this very straight road. I do not believe him when he said that he could only see a distance of 28 feet ahead of him. I agree, for the reasons given by Counsel for the plaintiff in his written submission, that it can be inferred from the physical evidence available that DWl was speeding and had a much higher duty of care in exercising caution on the road, and, having found, as indicated earlier, that the lorry had cut into the motor - cycle's path and collided into it at KI and dragged it all the way to Jl, I find DWl fully to blame for the collision.

Now to the question of damages. Having regard to PW2's evidence that as a rubber tapper she could earn as much as RM600 a month and that the lowest wage she received was RM400 per month, I accept the evidence of the plaintiff (PWl) that Tan Mee Ho, the elder of her deceased children, was paid a salary of RM500 per month tapping her rubber small - holding. I also accept PWl's evidence that her second deceased child, Tan Mee Kiau, was paid RM100 per month as an apprentice tapper. With respect, I agree with K.C. Vohrah J in *Rebecca Mathew & Ors. v Syarikat Kerjasama Serbaguna Gema Wong Siona Bhd. & Anor* [1990] 1 MLJ 443 that:

> the approach of deducting a percentage leaving the remainder as surplus income for the defendants is a modern trend for both estate and dependency claims.

In the circumstances of this case, apart from the evidence of PWl (whose evidence would naturally be self - serving) to the effect that the first deceased's living expenses upon herself amounted in PWl's estimation to only about RM100 per month, I would, in accordance with the modern trend, deduct one - third from the first deceased's wages as living expenses leaving the remainder as surplus income. Similarly for the second deceased.

Loss of Earnings for Lost Years

In respect of the first deceased, who was 22 at the time of her death, I ascertain the multiplier, in the accepted manner (55-22=33-11), as 22 years' purchase. In respect of the second deceased, who was then aged 15, I ascertain the multiplier as (55-l5=40-13) 27 years' purchase. I accept Mr. Kumar's suggestion age reasonable that there be 10 years' purchase for the pre - trial loss. There will therefore be 12 years' purchase for post-trial loss in respect of the first deceased and 17 years' purchase in respect of second deceased. I also accept as reasonable Mr. Kumar's suggestion in respect of the second deceased that the Court in assessing pre - trial loss prescribe a period when she would only be drawing a young apprentice's wage. Accordingly, I award damages as follows:

In respect of 1st deceased:

Pre-trial loss: RM330 x 10 x 12 = RM39,600 with interest at the rate of 4% per annum from the date of the accident.

Post-trial loss:	12 years' purchase of RM330 - RM35,000 with no interest.
Agreed Special Damages:	RM3,280 with interest at the rate of 4% per annum from the date of the accident.
Loss of expection	RM5,000 with interest at the rate of 8% per annum from the date of the service of the writ.

In respect of 2nd deceased:

Pre-trial loss for:

(a) the first 5 years (during apprenticeship):

RM66 x 5 x 12 = RM3,960

(b) the remaining 5 years: RM3300 x 5 x 12 = RMl9,800

Total RM23,760

with interest at the rate of 4% per annum from the date of the accident.

Post - trial loss: 17 years' purchase of RM330 = RM44,600 with no interest.

Agreed Special Damages:	RM2,874. with interest at the rate of 4% interest per annum from the date of the accident.
Loss of expection	RM5,000 with interest at the rate if 8% per annum from the date of the service of the writ.

Costs to be taxed.

Also found at [1992] 2 CLJ 1035